

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

ROBERT LEWIS MORGAN,

Petitioner,

v.

Case No: 5:22-cv-185-TPB-PRL

WARDEN, FCC COLEMAN –
LOW,

Respondent.

ORDER OF DISMISSAL WITHOUT PREJUDICE

Petitioner, a federal inmate incarcerated at the Coleman Federal Correctional Complex, initiated this civil action by filing a Petition for Writ of Habeas Corpus Under 28 U.S.C. § 2241 (Doc. 1). In 2016, Petitioner entered a plea of guilty in the Southern District of Florida to conspiracy to import Alpha-PVP (commonly known as “flakka” or bath salts), aggravated identity theft, and money laundering. *See United States v. Morgan*, 713 F. App’x 829 (11th Cir. 2017). The trial court accepted Petitioner’s plea and sentenced him to a cumulative 175-month term of incarceration, to be followed by a cumulative life term of supervised release. *See Morgan v. United States*, No. 18-cv-21024-UU, 2020 WL 6731234, at *6 (S.D. Fla. Oct. 23, 2020). Petitioner sought a direct appeal, and the Eleventh Circuit affirmed Petitioner’s

judgment of conviction. *See Morgan*, 713 F. App'x at 829. Petitioner later filed with the sentencing court a motion to vacate under 28 U.S.C. § 2255, and the sentencing court denied the motion in November 2020. *Morgan v. United States*, No. 18-cv-21024-UU, 2020 WL 6729405, at *1 (S.D. Fla. Nov. 16, 2020). The Eleventh Circuit denied a certificate of appealability in February 2022. *Morgan v. United States*, No. 21-11539-E, 2022 WL 538879, at *1 (11th Cir. Feb. 8, 2022). Petitioner is currently in BOP custody, with a release date of June 22, 2029. *See* Federal Bureau of Prisons, Inmate Search, available at www.bop.gov (last visited Apr. 15, 2022).

In this Petition, Petitioner challenges the legality of his convictions and argues that Alpha-PVP is not a “schedule I controlled substance”; and thus, the trial court did not have jurisdiction over the offenses for which Petitioner was convicted and sentenced. *See generally* Doc. 1.

Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *See also* Rule 12, Rules Governing Section 2255 proceedings. The Eleventh Circuit has held that 28 U.S.C. § 2241 is unavailable to challenge the validity of a sentence except on very narrow grounds. *McCarthan v. Director of Goodwill Industries-Suncoast, Inc.*, 851 F.3d 1076, 1079 (11th Cir. 2017); *Bernard v. FCC Coleman Warden*, 686 F. App'x 730 (11th Cir. 2017) (citing *McCarthan*, 851 F.3d at 1092-93). None of

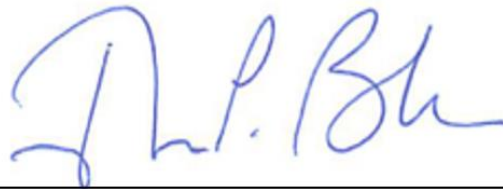
those grounds are present here, and thus Petitioner may not proceed under § 2241. As such, this case is due to be dismissed.

Accordingly, it is

ORDERED AND ADJUDGED:

1. This case is **DISMISSED without prejudice**.
2. The Clerk shall enter judgment accordingly, terminate any pending motions, and close this case.

DONE AND ORDERED in Tampa, Florida, this 15th day of April, 2022.



TOM BARBER
UNITED STATES DISTRICT JUDGE

Jax-7

C: Robert Lewis Morgan, #13829-104